IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 807 of 2003

Between:

M/s.Sri.Balaji Wines Rep by its Proprietor K.Kumar Goud
Nehru Nagar , Jagadgirigutta , Qutubullapur Mandal RR.Dist.

..... PETITIONER

AND

1 The Commissioner of Prohibition & Excise A.P.Hyderabad.
2 The Dy.Commissioner of Prohibition & Excise, Hyderabad.
3 The Prohibition & Excise Superintendent RR.Dist , Narayanaguda at Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, preferably one in the nature of Writ of Mandamus ,declaring the impugned order of the 3rd respondent dt:16-11-2002 in Cr.No.E4/10109/2002 rejecting the claim of the petitioner to refund the amount of Rs.3,00,000/- together with interest thereon collected in excess towards license fee for the Excise Year 1998-1999 in respect of the Petitioner Wine Shop as illegal , arbitrary and Contrary to law and consequently direct the respondents to refund the said excess amount collected from the petitioner to the petitioner together with interest thereon forthwith.

Counsel for the Petitioner:MR.J.KANAKAIAH

Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

The petitioner questions the order of the third respondent-Prohibition and Excise Superintendent, Ranga Reddy, Narayanaguda at Hyderabad dated 16.11.2002 in rejecting his claim to refund the amount of Rs.3,00,000/- together with interest thereon collected in excess towards the license fee for the excise year 1998-1999 in respect of IL-24 Licence of M/s. Balaji Wines, Nehrunagar Jagadgirigutta, Ranga Reddy District as illegal, arbitrary and contrary to the A.P. Excise Act and Rules made thereunder.

Admittedly, the petitioner was granted IL-24 licence at Door No.40-1, Nehrunagar, Jagathgirigutta, Qutubullapur Mandal and Municipality during the year 1998-99 under the name and style of Sri Balaji Wines vide licence bearing No.390, dated 03.04.1998 valid up to 31.03.1999. The said licence was granted in the licence fee slab of Rs.9,00,000/- basing on the report of the excise officials wherein they stated that the premises of the petitioner falls within 5 km. belt area from periphery of Municipal Corporation of Hyderabad and therefore the licence fee payable by the petitioner as per the Schedule made under Rule 25 of A.P. Indian Liquor & Foreign Liquor Rules, 1970 (hereinafter called as Rules) is Rs.9,00,000/-. The licence fee payable at that relevant period was Rs.9,00,000/- when the shop is situated within 5 kms. of peripheral area of Municipal Corporation of Hyderabad. But, if the shop is situated beyond 5 kms. of peripheral area of Municipal Corporation of Hyderabad the licence fee payable was only Rs.6,00,000/-.

There is no dispute as regards the liability of the licence fee payable if the shop of the petitioner is situated beyond 5 kms. of peripheral area of Municipal Corporation of Hyderabad was only Rs.6,00,000/-. But, the licence fee was collected from the petitioner based on the report of the excise officials stating that the shop of the petitioner is situated within 5 kms. of peripheral area of Municipal Corporation of Hyderabad.

After coming to know that his shop was situated beyond 5 kms., the petitioner made a representation to the third respondent on 24.09.1998 stating that his shop is situated beyond 5 kms belt area from the peripheral area of the Municipal Corporation of Hyderabad. The said representation was enquired through the

Station House Officer, Medchal and Sub-Divisional Prohibition and Excise Officer,Medchal and that they reported that they have measured the distance from the peripheral area of Municipal Corporation of Hyderabad to the licenced premises of the shop of the petitioner and found that the shop is located at a distance of 7 kms. from the peripheral area of Municipal Corporation of Hyderabad.

Though the Excise Officials verified the genuineness of the request of the petitioner that the shop of the petitioner is situated beyond 5 kms. of peripheral area of Municipal Corporation of Hyderabad, the respondents have not considered his request for refund of the excess licence fee. Therefore, the petitioner was constrained to file a Writ Petition No.27878 of 1998 seeking refund of the licence fee and the said Writ Petition was disposed of on 24.01.1998 directing the second respondent to consider and dispose of the representation of the petitioner dated 24.09.1998 within a period of one month from the date of receipt of the said order.

In pursuance to the aforesaid orders of this Court, as per the recommendations of the excise officials and as per the certificate issued by the Assistant Executive Engineer (R & B Division), Hyderabad, the respondents have considered the distance of the licenced premises of the shop of the petitioner from the peripheral area of Municipal Corporation of Hyderabad was beyond 5 kms. Accordingly, the respondents have collected Rs.6,00,000/- only as licence fee for the year 1999-2000 treating the said shop located beyond 5 kms. belt area from the peripheral area of Municipal Corporation of Hyderabad, but, failed to refund the excess amount collected illegally for the year 1998-99 and ultimately rejected the request of the petitioner by the impugned order, dated 16.11.2002.

The learned Government Pleader for Prohibition & Excise submits that no doubt, as per the enquiry it was revealed that the distance between the licenced premises of the shop of the petitioner and the peripheral limits of Municipal Corporation of Hyderabad was found beyond 5 kms, but, as per the Amended Rule 23 of A.P. Indian Liquor and Foreign Liquor Rules, 1970 and as amended in G.O.Ms.No.1105, Rev.(Ex.II), dated 16.12.2002 the excise officials reported that the distance between the licenced premises of the shop of the petitioner and the peripheral limits of Municipal Corporation of Hyderabad found within 5 kms and therefore the licence fee of the petitioner was fixed for the year 2003-2004 treating it as within 5 kms. belt area.

Admittedly, the amendment made by way of Explanation to Rule 23 of the Rules has no retrospective effect and it has been came into force only with effect from 16.12.2002 to measure the distance from the nearest point of the limits of Municipal Corporation/Municipality to the IL-24 Shop in a straight line on horizontal plane. But, admittedly, they all used to measure the distance from the nearest point of the accessible way. The nearest distance from the accessible way from the licenced premises of the shop of the petitioner to the limits of Municipal Corporation of Hyderabad was beyond 5 kms which was uniformly applied to all the premises of Municipal Corporation of Hyderabad for the purpose of measuring the distance.

I am of the opinion that the respondents have rightly treated the shop of the petitioner situated beyond 5 kms. belt area of Municipal Corporation of Hyderabad for the excise years 1999-2000, 2000-2001 and
2001-2002. Therefore, it is not open for the respondents to reject the request of the petitioner to refund the said excess licence fee remitted by him during the year 1998-1999. Admittedly, the shop of the petitioner is situated beyond 5 kms. belt area and as per the relevant schedule applicable for that excise year 1998-1999, the licence fee payable by the petitioner was only Rs.6,00,000/-. As such, the collection of excess licence fee treating it as if it is situated within 5 kms. belt area of Municipal Corporation of Hyderabad is illegal and unsustainable and it is liable to be set aside.

Therefore, the order of the third respondent dated 16.11.2002 is set aside and the respondents are directed to refund the excess licence fee of Rs.3,00,000/- paid by the petitioner for the year 1998-1999 in respect of his shop within six weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

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V. ESWARAIAH, J

Dated:16-03-2005

Ccm

That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the sixteenth day of March, Two thousand and Five.

ASSISTANT REGISTRAR

To

1 The Commissioner of Prohibition & Excise A.P.Hyderabad.
2 The Dy.Commissioner of Prohibition & Excise Hyderabad.
3 The Prohibition & Excise Superintendent RR.Dist , Narayanaguda at Hyderabad.

4 Two CCs to theG.P. for Prohibition & Excise, High Court Buildings,

A.P.Hyderabad(OUT)

5 Two CD copies.